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WHAT IS SEXUAL HARASSMENT? AN EMPIRICAL STUDY OF PERCEPTIONS OF ORDINARY PEOPLE AND JUDGES

JILL D. WEINBERG* AND LAURA BETH NIELSEN**

I. INTRODUCTION

In the movie "Horrible Bosses," Jennifer Aniston plays a dentist, Dr. Julia Harris, who harasses her dental assistant, Dale, played by Charlie Day. She sprays water on his crotch, grabs his penis, accosts him while wearing nothing but a lab coat and underwear, and threatens to tell his fiancé that they had sexual relations unless he actually has sex with her. The other protagonists in the film mock Dale, saying her sexual advances are not bad, and that he should be thrilled his attractive boss shows interest in him. Movie-goers find these scenes humorous: they laugh at Dale's high-pitched voice, his awkwardness when he is harassed, and his demands for a "rape-free environment."

The movie's humor relies on shared social knowledge that there are "legitimate" and "illegitimate" victims of workplace harassment. Public perceptions of sexual harassment map onto cultural scripts of who can be a legitimate victim. Put another way, if the roles were reversed – a male superior harassing a female subordinate – our interpretation of the events featured in the film would change. A male boss acting in that manner would be viewed as exerting his power to coerce his employee to have sex with him, and the employee's friends would be encouraging her to find an attorney or a new job, at the very least. The scenes would no longer be humorous, and any attempt to make comedic humor of a male harassing a female would be deemed inappropriate, insensitive, and deplorable.

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This example from "Horrible Bosses" also raises interesting questions about the nature of laws concerning sexual harassment. If our perceptions about a movie would change if we change the gender of the boss-perpetrator and the employee-victim, does this translate in the way individuals determine whether a workplace dispute constitutes illegal sexual harassment or offensive, yet non-actionable conduct? While sexual harassment laws are gender-neutral, that is, the perpetrator can be a female harassing a male or a male harassing another male, are people convinced that this is possible? And, are there other facts that make a sexual harassment claim more or less credible?

This Article is motivated by a series of empirical and normative questions. First, do judges and ordinary people perceive sexual harassment differently? Second, does a person's background shape their perceptions about the absence or presence of sexual harassment? Employment discrimination claims are emotionally charged for the individuals involved, and allegations of sexual harassment are no different. Based on prior research, we have found that a person's social location and identity predicts whether an individual views a workplace dispute as illegal.[1]

We examine these questions empirically, using experimental research methods. Specifically, we developed a survey that contains vignettes of hypothetical workplace disputes that varies the characteristics of the alleged victim and perpetrator, the conduct involved, and the workplace policy on sexual harassment. Our study also collected demographic information of the judges and ordinary people, so we could identify whether the two groups define sexual harassment differently.

This Article is divided into four parts. Part II highlights the legal, sociological, and psychological literatures that make claims about how ordinary people understand and define sexual harassment. Part III describes our research methodology and data used to address our two research questions. We used a factorial survey to examine the legal and extra-legal factors that predict when ordinary people and trial judges identify a workplace dispute as illegal discrimination. There have been few studies that investigate judicial patterns using this technique,[2] and even fewer studies that compare ordinary people and judges.[3] Part IV presents the results of our study. Our data show variation across the ordinary people and judge populations, specifically

1. *See* Jill D. Weinberg & Laura Beth Nielsen, *Examining Empathy: Discrimination, Experience, and Judicial Decisionmaking*, 85 S. CAL. L. REV. 313 (2012).

2. *See, e.g.*, John Hagan, Gabrielle Ferrales & Guillermina Jasso, *How Law Rules: Torture, Terror, and the Normative Judgments of Iraqi Judges*, 42 L. & SOC'Y REV. 605 (2008); Chris Guthrie, Jeffrey R. Rachlinski & Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1 (2007).

3. Stephen Landsman & Richard F. Rakos, *A Preliminary Inquiry into the Effect of Potentially Biasing Information on Judges and Jurors in Civil Litigation*, 12 BEHAV. SCI. & THE L. 113 (1994).

ordinary people tend to have a broader definition on what constitutes sexual harassment than judges. We conclude by considering whether the law should take a broader conception of sexual harassment, given the differences across the ordinary people and judge populations.

II. THEORIES OF SEXUAL HARASSMENT

Sexual harassment is a form of illegal workplace sex discrimination, pursuant to Title VII of the Civil Rights Act of 1964.[4] Accordingly, sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment . . . [that] explicitly or implicitly affects an individual's employment."[5] There are two legal theories of sexual harassment. The first is "quid pro quo" whereby a sexual advance or threat affects the employee-victim's terms of employment – for example sex in exchange for a promotion.[6] The second theory, "hostile work environment," refers to a workplace with severe and pervasive conduct that it interferes with an employee's ability to perform his or her job.[7]

While the formal law provides the legal architecture of what constitutes sexual harassment, real life is more complex and contextual. A particular workplace environment does not constitute sexual harassment, but a judge or jury may inclined to view it as evidence of harassment. In what follows are possible explanations on why sexual harassment occurs and how these factors may explain why someone would view a situation as unacceptable versus illegal. Based on a review of sociological, psychological, and legal literatures, we hypothesize that there are five significant explanations of sexual harassment: workplace hierarchy, gender hierarchy, organizational responses to harassment, conduct, and the lived experience. These explanations serve as our hypotheses underlying our empirical study.

A. Workplace Hierarchy

Sociologists suggest that sexual harassment is the result of an exploitative unequal power relationship within the workplace.[8] Broadly, sociologists suggest that the structure of work environments, combined with the composition within work settings creates the conditions for sexual harassment to occur. Structural aspects of the workplace promote inequities between

4. Civil Rights Act of 1964, 42 U.S.C. § 2000e-2; 29 C.F.R. § 1604.11(a).

5. 29 C.F.R. § 1604.11(a) (1980).

6. *Id.*; 62 Am. Jur. Trials 235, Westlaw (originally published in 1997, database updated Dec. 2016).

7. Meritor Sav. Bank v. Vinson, 477 U.S. 57, 65–67 (1986).

8. *See* Sandra S. Tangri, Martha R. Burt & Leanor B. Johnson, *Sexual Harassment at Work: Three Explanatory Models*, 38 J. SOC. ISSUES 33, 37–40 (1982).

individuals, most notably by way of a hierarchical leadership configuration. At the same time, occupational sex segregation remains salient – that is, some industries and occupations remain disproportionately dominated by either men or women or men occupy positions of authority within a workplace more than women.[9] The tiered nature of organizations, together with sex segregation, creates the conditions for sexual harassment at work.

This theory predicts that evaluators are more likely to identify a scenario as sexual harassment if it involves a superior with power and authority over a subordinate employee. In this case, the gender of the superior and subordinate would be irrelevant (or at least less relevant than hierarchy), and individuals would be less inclined to consider conduct between coworkers or a subordinate-aggressor to be illegal harassment.

B. Gender Hierarchy in Society

Some feminist theorists argue that harassment is a product of patriarchal society, whereby victimization of women affirms they remain inferior to men.[10] Rooted in sociocultural explanations, these theories suggest that sexual harassment is a product of broader legitimized power and status differences between men and women exist everywhere in society and therefore are present in the workplace. In other words, sexual harassment is understood as an outgrowth of power and dominance over women both at work and in society at large.

Proponents of this explanation emphasize gender as a key predictor of who is at risk of harassment. The gender of the victim would have the most impact for a trier of fact. Even though the law explicitly states males can be victims of sexual harassment,[11] men would be less likely to be viewed victims (as the Horrible Bosses example illustrates).

C. The Organizational Meaning of Harassment

A third perspective posits that the presence of internal structures (e.g., human resources departments) and formalized policies and procedures outlining unacceptable workplace conduct influence perceptions of legal compliance. Organizational sociology research argues that irrespective of their effectiveness, judges view explicit anti-harassment policies as indicia of

9. *See, e.g.*, Barbara Reskin, *Sex Segregation in the Workplace*, 19 ANN. REV. SOC. 241, 241–42 (1993).

10. *See, e.g.*, CATHERINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 215–19 (1989); *see also* Kathleen M. Rospenda, Judith A. Richman & Stephanie J. Nawyn, *Doing Power: The Confluence of Gender, Race, and Class in Contrapower Sexual Harassment*, 12 GENDER & SOC'Y 40 (1998) (conceptualizing sexual harassment as a sociocultural phenomenon and not necessarily a top-down hierarchical phenomenon).

11. *See, e.g.*, Oncale v. Sundower Offshore Services, 523 U.S. 75, 75 (1998).

compliance with anti-discrimination law.[12] Furthermore, according to employment discrimination law, any sexual harassment policy is sufficient compliance.

This theory posits that judges and ordinary people will view the presence or the absence of an anti-harassment policy differently. Judges, as legally trained professionals, should be more deferential to internal grievance procedures, knowing they can offset employer liability of sexual harassment, specifically, and employment discrimination, more broadly. We also predict that ordinary people unfamiliar with the law would be uninfluenced by anti-harassment policies in a workplace, and more influenced by other factors such as the conduct or the fact the employee left the job after feeling victimized.

D. The Conduct

The fourth theory focuses on the conduct involved. Conduct that is more graphically sexual in nature (e.g., a touching) would be viewed differently from less sexual gesture such as complimenting someone's outfit. For this theory, we believe judges and ordinary people view the perpetrator's conduct differently. We predict judges will be less likely affected by the conduct at issue, whereas ordinary people will be more willing to identify conduct as unacceptable, even if it does not constitute a hostile work environment.

E. The Lived Experience of Harassment

The final hypothesis draws from extensive psychology literature which shows that an individual's personal background and identity characteristics may influence how they perceive social situations. Specifically, research on empathy suggests individuals who are able to identify with victims have a greater willingness to help that individual. Put another way, individuals are more or less likely to perceive the presence of discrimination based on their identification with a stigmatized social group, whereby the more an individual identifies with a devalued social group, the more likely he or she will view a situation as discrimination.[13]

In the study featured in this article, we contend an individual's background will shape how they respond to questions about the presence or absence of sexual harassment. Based on research on empathy, we predict both judges and

12. The courts have, in essence, encouraged organizations to create discrimination policies and procedures by suggesting that they serve as a defense from liability or monetary damages. *See* Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 764 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998). For an extensive discussion on the ways organizational policies influence judicial decision making, *see* LAUREN B. EDELMAN, WORKING LAW: COURTS, CORPORATIONS AND SYMBOLIC RIGHTS (2016).

13. For an in-depth discussion of psychology research on empathy and legal decision making, *see* Jill D. Weinberg & Laura Beth Nielsen, *supra* note 3.

ordinary people rely upon personal experience when evaluating the workplace scenarios presented to them. Specifically, we believe white women and people of color – individuals who are traditionally the most effected by workplace discrimination and harassment – will identify the workplace vignettes as harassment, whereas white men will not.

III. DATA AND METHODS

A. Judge and Ordinary People Populations

To examine perceptions of sexual harassment, we used a factorial survey featuring descriptions of workplace disputes. Participants of our ordinary people sample came from a nationally representative sample of 2,087 people drawn by Knowledge Networks (KN), an online research and analysis firm that maintains a panel of 48,725 U.S. households for its surveys.[14] From our initial sample, we removed individuals who completed the survey in less than six minutes, and who answered fewer than six manipulation check questions correctly, yielding a final sample of 1,883 respondents. A demographic breakdown of ordinary people is featured in Table 1.

14. KN estimates that its sampling methods provide 97% coverage, meaning that 97% of the intended population falls within its recruitment methods. For a more detailed discussion of the sampling strategy of the ordinary people population, *see generally* Jill D. Weinberg, Jeremy Freese & David McElhattan, *Comparing Data Characteristics and Results of an Online Factorial Survey Between a Population-Based and a Crowdsource-Recruited Sample*, 1 SOC. SCI. 292 (2014).

TABLE 1. ORDINARY PEOPLE	
Gender	
Male	948 (50.35%)
Female	935 (49.65%)
Race	
White	1487 (78.97%)
Non-White	1188 (21.03%)
Age	
30s and below	431 (22.89%)
40s	364 (10.57%)
50s	445 (19.33%)
60s	419 (22.25%)
70s+	224 (11.90%)
Political Ideology	
Conservative	532(28.49%)
Middle of the Road	573 (30.69%)
Liberal	762 (40.81%)
	N = 1883

Table 1 presents the demographic information about the ordinary people in our sample. The ordinary people in this sample include male (50.35%), white (78.97%), and an average age in their 50s (age range 18-93). Thirty-nine point four six percent (39.46%) of respondents obtained a bachelor's degree or higher. In terms of political ideology, which we operationalize as a three category variable – conservative, moderate, and liberal – 40.8% identified as liberal.

Because judges have strict protocols about email – most notably, email addresses are often not publicly available – we sent paper surveys to judges with a self-addressed envelope. We generated a sample of federal and state court judges to send surveys. We sent surveys to all federal district court judges because of the limited population (N=942) and to a random sample[15] of state trial court judges (N=600). Information about the judges was retrieved

15. We selected judges from selected states to capture regional variation. These states included the similar cities featured in large-scale research on employment discrimination. *See, e.g.*, Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, *Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States*, 7 J. EMPIRICAL LEG. STUD. 175, 181 (2010); John Donohue & Peter Siegelman, *The Changing Nature of Employment Discrimination Litigation*, 43 STANFORD L. REV. 983, 985 (1991).

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from *The American Bench*, a judicial directory that lists the names and addresses of both Federal and state court judges.[16] In total, we received over 200 surveys.[17] Similar to the ordinary people population, we removed respondents who incorrectly answered less than 6 manipulation check questions. In this case, we removed one judge respondent. A demographic breakdown of judges is featured in Table 2 below.

TABLE 2. DEMOGRAPHICS OF JUDGES

Gender	
Male	157 (78.5%)
Female	43 (21.5%)
Race	
White	165 (82.5%)
Non-White	35 (17.5%)
Age	
40s	3 (1.52%)
50s	37 (18.69%)
60s	95 (47.98%)
70s+	63 (31.82%)
Political Ideology	
Conservative	65 (32.5%)
Middle of the Road	72 (36.0%)
Liberal	63 (31.5%)
	N = 199

Table 2 shows the composition of our judge sample on the basis of gender, race, age, and political party identification. Given that we did not want to devise a survey that revealed the identity of a judge, we had to keep the categories broad (e.g., age by decade) and exclude regional information. Judges in this sample were predominantly male (78.5%), white (82.5%), and in their 60s (47.97%). These figures, however, are representative of the federal judiciary at the trial level.[18]

16. *See* THE AMERICAN BENCH (Forster-Long, LLC, ed. 2016).

17. While our response rate is low (11% federal; 18.5% state, respectively), sampling from a national pool tends to have a lower response rate because judges are less willing to complete surveys sent in the mail.

18. FEDERAL JUDICIAL CENTER, BIOGRAPHICAL DIRECTORY OF JUDGES, http://www.fjc.gov/history/home.nsf/page/judges.html (last visited Aug. 2, 2016).

B. Research Methodology: The Factorial Survey

Factorial surveys involve subjects reading and respond to vignettes, or short statements describing a scenario of interest – what law professors and students colloquially refer to as "hypos" or "hypotheticals." This research design allows us to examine the isolate specific variables in shaping judgments of discrimination and perceptions of appropriate responses to these situations.[19] In this case, workplace disputes involving potential sexual harassment contain a range of factors that may determine whether the target's grievance is legitimate or perceived as legally actionable. By randomly assigning different characteristics within the framework of the same vignette, factorial design allows the researcher to identify the effect of worker and workplace characteristics as influencing evaluators' determination of whether a dispute rises to the level of "illegal discrimination."

Each vignette is composed of a set of factors (independent variables), each of which contains several possible randomly assigned levels (variable values). In this study, respondents received three sexual harassment vignettes. Each vignette features a workplace dispute in which a worker experiences some form of workplace harassment that results in him or her quitting. The vignettes use different company descriptions.[20]

Every vignette features 1 randomly assigned level from each of 4 factors, yielding a 3 x 3 x 3 x 3= 81 population of factorial objects.[21] We varied the gender of the perpetrator and victim where gender is assigned as "male-perpetrator, female-victim," "female-perpetrator, male-victim," or "male-perpetrator, male-victim." The employee relationship of the perpetrator and victim within the workplace had three levels: a boss as perpetrator with a subordinate victim; coworkers; and the subordinate as perpetrator with a boss as the victim. The conduct involved either someone complimenting another's outfit, rubbing a person's shoulders in the office, or repeated sex joke emails. We also varied characteristics of the workplace environment, where the employing organization either had a strict, ambiguous, or no policy against sexual harassment. The vignette factors and their levels are displayed in Table 3.

19. *See, e.g.*, Guillermina Jasso, *Factorial Survey Methods for Studying Beliefs and Judgments*, 34 SOC. METHODS & RES. 334, 410 (2006).

20. For example, one vignette reads: "Cartwell & Downing is a magazine publishing house. The largest department within its company involves work on *Indulgent*, a cooking magazine. This department is comprised of 12 editors (9 male) and 27 support staff (22 female). Steve is Jane's boss. One day, Steve said how attractive Jane looked in her outfit. Jane left the company because of what happened. There are no policies or procedures to address these matters."

21. The three vignettes were not selected as a simple random sample from this population. Instead, we used a sampling technique to ensure respondents received all different conditions for the four factors. For example, for the conduct condition, with three possibilities (outfit compliment, shoulder rub, joke emails), all subjects randomly received each of these treatments.

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TABLE 3. VIGNETTE FACTORS AND LEVELS

Factor	*Levels*
Gender of Perpetrator-Victim	(1) Male-Perpetrator, Female Victim (2) Male-Perpetrator, Male Victim (3) Female-Perpetrator, Male Victim
Employee Relationship of Perpetrator-Victim	(1) Boss as Perpetrator, Subordinate as Victim (2) Coworkers (3) Subordinate as Perpetrator, Boss as Victim
Conduct	(1) Perpetrator complimented the victim's outfit. (2) Perpetrator rubbed victim's shoulders in an office. (3) Perpetrator sent repeated sex joke emails to the victim.
Workplace Policy on Harassment	(1) There are no policies addressing these matters. (2) There are policies addressing these matters but are ambiguous. (3) There are strict policies addressing these matters.

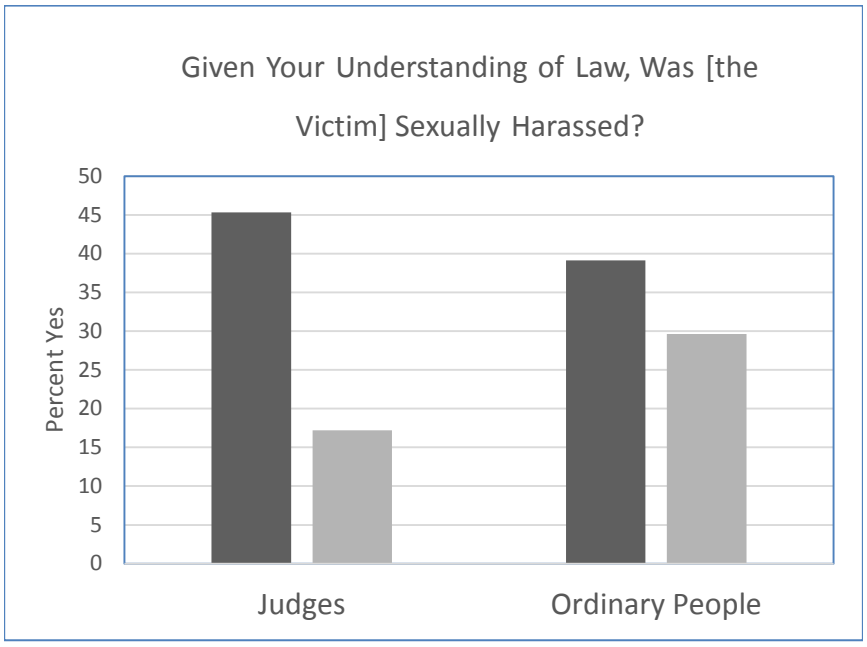
After reading each vignette, respondents answered a series of closed-ended questions about whether they think the target was discriminated against and how they recommend the target should respond to the dispute. These questions included whether the victim should find a lawyer (measured on a 1-7 scale), whether the outcome would be fair if a judge determined the dispute was harassment (measured on a 1-7 scale), and whether in the evaluators' opinion the dispute constituted harassment (measured on a 1-7 scale). For this Article, we focused specifically on the question "given your understanding of law, was the employee sexually harassed?," which was measured as a "Yes" or "No" answer. This variable allows us to compare how ordinary people and trial judges define the illegal sexual harassment.

IV. RESULTS

We first examined our dependent variable to evaluate the general distribution of responses, not controlling for the variables featured in the vignettes or survey respondent characteristics. When we aggregated the

responses to the three harassment scenarios, the dependent measure (given your understanding of law, was the employee sexually harassed?) had an unequal split where 40.59% of ordinary people and judges viewed the scenarios as sexual harassment, while 59.41% did not. However, when we did a cross-tabulation, analyzing whether there was a relationship between being an ordinary person or judge, the distributions changed dramatically. Figure 1 below features a basic breakdown of the dependent variable by judge and ordinary people populations. Only 23.15% of judges evaluated the scenarios as harassment, and 76.85% of them did not. By contrast, 42.31% of the ordinary people viewed the disputes as sexual harassment, while 57.69%. This comparison reveals nearly a 19.16% difference between judges and ordinary people who viewed the scenarios as harassment. The relationship between the evaluation of these vignettes and whether a respondent was a trial judge or ordinary person is a statistically significant relationship.[22]

FIGURE 1: BIVARIATE ANALYSIS OF DEPENDENT VARIABLE, BY POPULATION



Next, we analyzed the relationship between the experimental conditions and whether someone is an ordinary person or judge influences the determination of illegal sexual harassment. Given the number of experimental conditions and corresponding levels, a graphical breakdown presented in Figure 1 provides a clearer picture on the differences across population.

22. This analysis was done using a chi-square test. $X2(1) = 76.6563$, $p = 0.00$.

FIGURE 2: BIVARIATE ANALYSES OF EXPERIMENTAL CONDITIONS AND DEPENDENT VARIABLE (%YES), BY POPULATION

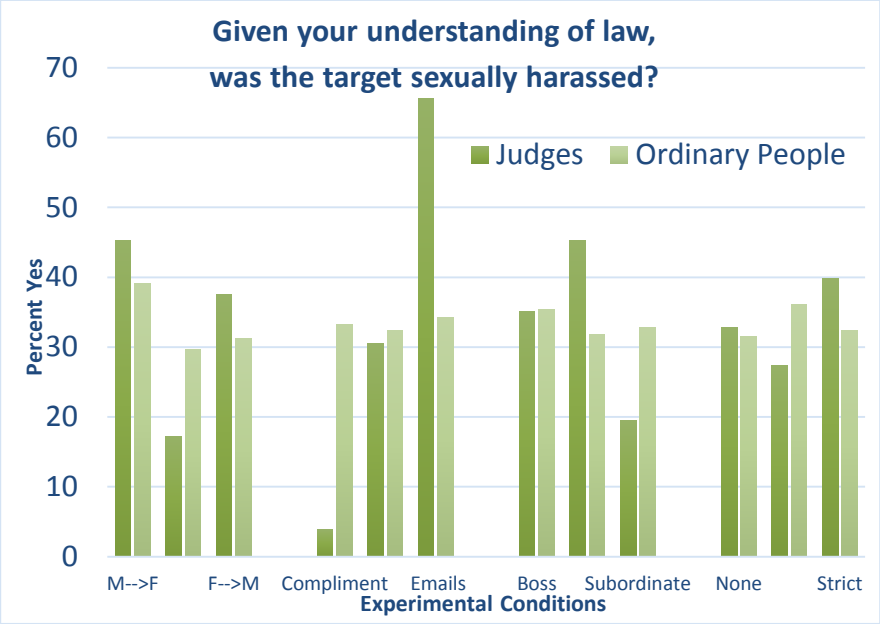


Figure 2 presents the bivariate analyses of the experimental conditions and the dependent variable, broken down by the ordinary people and judge populations. Overall, ordinary people are more likely than judges to evaluate the same scenario as constituting sexual harassment than are the judges, even when we take into account the experimental conditions. Figure 2 shows several key findings.

We found significant differences on determinations of discrimination across ordinary people and judges depending on the gender of the harasser and the harassed. While ordinary people and judges view a scenario as sexual harassment more often if the perpetrator is a male and the victim is a female (45.31% vs. 39.13%, respectively), judges are generally unwilling to view males as victims of sexual harassment, as seen with only 37.5% of judges identifying a dispute as harassment if it involves a female perpetrator and a male victim, and 17.19% if the scenario involves a male perpetrator and a male victim.[23]

The employment relationship between the perpetrator and victim yielded unexpected results. Ordinary people were most likely to view a scenario as harassment if the perpetrator was the victim's supervisor (35.42%), whereas judges were most likely to view a scenario as harassment if it involved

23. The same-sex sexual harassment result is surprising because the Supreme Court explicitly stated this theory of sexual harassment is possible. *See* Oncale, *supra* note 13.

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coworkers (45.31%).[24] Ordinary people evaluated conduct evenly, that is they were equally likely to evaluate an outfit compliment, a shoulder rub, or joke emails in the same way. Judges, however, were overwhelmingly swayed by joke emails, describing a scenario as discrimination 65.52% of the time. Finally, judges were more influenced by the presence of a strict sexual policy than ordinary people.

Finally, we ran a logistic regression to control for the experimental and the respondent demographic characteristics. Due to clustering of vignettes by respondent, we use clustered robust standard errors for our regression estimates.[25] We ran three models. The first model included only the vignette experimental conditions and includes a variable to differentiate between judges and ordinary people. The second model included the vignette experimental conditions and the respondent characteristics, which includes gender and race. The final model includes the vignette experimental conditions, the respondent, characteristics, respondent ideology, and a scaled measure of legal confidence, using a set of questions that test civil litigation attitudes.[26] We believe this third model would show whether there is a relationship between confidence in the legal system and evaluation of possible legal claims.

A. A Basic Logistic Regression

Table 4, below, presents the results of our first model. The models are broken down by judge and ordinary people populations, and the coefficients are expressed as odds ratios. With consistent bivariate analyses, ordinary people and judges are less likely to identify a scenario as sexual harassment if the victim is a male. The relationship is inverse. Judges view scenarios with same-sex male harassment have a 91% reduction in the odds of identifying a scenario as harassment, whereas ordinary people would have a 66% reduction in the odds of identifying a scenario as harassment. This inverse relationship is

24. Because these chi-square analyses do not control for the other variables, we believe this result is affected by other factors. We examine this result in a logistic regression model featured later in this Article.

25. Each unique human respondent in the ordinary people sample (N=1,883) and judge sample (N=199) responds to three vignettes describing possible sexual harassment, the total pool of observations is three times as large as the sample.

26. The questions emerge from prior research with each question presented as 1-5 scale, with 1=strongly disagree and 5=strongly agree. *See* Valerie P. Hans & William S. Lofquist, *Perceptions of Civil Justice: The Litigation Crisis Attitudes of Civil Jurors*, 12 BEHAV. SCI. & LAW 181 (1994). The statements used to construct the scale are: Most people who sue have legitimate grievances; There are far too many frivolous lawsuits today; People are too quick to sue rather than trying to solve disputes in some other way; The courts have made it easier to sue someone in recent years; Civil lawsuits have made this a more fair society; The number of lawsuits shows that our society is breaking down; Juries do a good job determining the outcomes of lawsuits and assessing damages; and The money awards that juries are awarding in civil cases are too large.

statistically significant for both populations. When the scenarios feature females as perpetrators, there is a 86% reduction in the odds that judges identify a scenario as sexual harassment, whereas 77% reduction in the odds that ordinary people identify a scenario as sexual harassment. This relationship was also statistically significant.

We begin to see larger differences with the judge and ordinary people populations when we varied the status of the perpetrator. When the perpetrator was a coworker, judges were 4.7 times more likely to evaluate a scenario as sexual harassment than scenarios involving a superior as the perpetrator. Ordinary people, however, had a 20% reduction in the odds that they would view a scenario as sexual harassment if it involved coworkers than scenarios involving a perpetrator who was the boss. For the judge population, there was no difference with scenarios featuring a subordinate as the perpetrator versus scenarios involving a superior. By contrast, ordinary people still were less likely to view scenarios as sexual harassment if the scenario featured a subordinate as the perpetrator (14% reduction in the odds), but this condition was significantly different than scenarios featuring perpetrators who occupied a superior position within the workplace.

This model reveals that the conduct in the scenarios greatly affected both judges and ordinary people. Judges were seven times more likely to evaluate a scenario as sexual harassment if it involved rubbing of shoulders and 34 times more likely to evaluate the scenario as harassment if the scenario featured sex joke emails versus a compliment to the outfit. Ordinary people also had similar evaluations of these conditions; although, to a lesser degree. They were 2.3 times more likely to evaluate a scenario as sexual harassment if it involved rubbing of shoulders and 4.3 times more likely to evaluate the scenario as harassment if the scenario featured sex joke emails versus a compliment to the outfit.

Finally, with respect to the presence or absence of sexual harassment policies, judges and ordinary people had similar results but varied when it came to ambiguously written sexual harassment policies. Judges were 2.8 times more likely to view a scenario as harassment if it featured a strict policy against harassment and 4.31 times more likely to view a scenario as harassment if it featured an ambiguous policy versus having no policy. In other words, the odds of identifying a scenario as harassment were higher if the policy was ambiguously written. A strict policy increased the odds by 30% that ordinary people would view the scenario as sexual harassment. However, ordinary people viewed an ambiguous policy as no different as having no policy. Put another way, a strict policy mattered for ordinary people, whereas judges only required the presence of *any* policy (whether strict or ambiguously written).

TABLE 4. LOGISTIC REGRESSION OF EXPERIMENTAL CONDITIONS

	Judges		Ordinary People	
Gender of Perpetrator/Victim				
Male→Male	0.09***	(0.04)	0.34***	(0.03)
Female→Male	0.14***	(0.07)	0.23***	(0.02)
Status of Perpetrator				
Coworker	4.70***	(1.99)	0.80***	(0.05)
Subordinate	1.05	(0.38)	0.86*	(0.06)
Conduct				
Shoulder Rub	7.05***	(3.66)	2.30***	(0.01)
Sex Joke Emails	34.00***	(17.7)	4.30***	(0.01)
Policies				
Strict Policies	2.80**	(1.20)	1.30***	(0.07)
Ambiguous Policies	4.31***	(2.11)	1.06	(0.07)
Constant	0.03***	(0.01)	0.80**	(0.06)
N	553		5599	
R-squared	0.2846		.041	

Reference categories: Male→Female, Boss, Outfit Compliment, No Policies
Clustered robust standard errors in parentheses
*p <0.05, **p <0.01, ***p <0.001

B. The Empathy Model

Table 5, below, presents the results of a logistic regression that features both the experimental conditions in the scenarios, as well as the gender and race of the respondent evaluating the scenarios. This model reflects our hypothesis that an individual's background may influence how they evaluate the scenarios. Accordingly, this model predicts that women and minorities would be more likely to classify these scenarios as sexual harassment either because they themselves have been victims or empathize with the victims.

TABLE 5. LOGISTIC REGRESSION WITH EXPERIMENTAL CONDITIONS AND RESPONDENT CHARACTERISTICS (THE EMPATHY MODEL)

	Judges		Ordinary People	
Gender of Perpetrator/Victim				
Male→Male	0.08***	(0.04)	0.34***	(0.03)
Female→Male	0.13***	(0.07)	0.24***	(0.02)
Status of Perpetrator				
Coworker	4.80***	(2.10)	0.80***	(0.05)
Subordinate	1.05	(0.38)	0.86*	(0.06)
Conduct				
Shoulder Rub	6.90***	(3.60)	2.28***	(0.22)
Sex Joke Emails	34.0***	(17.9)	4.25***	(0.01)
Policies				
Strict Policies	2.90**	(1.33)	1.30***	(0.09)
Ambiguous Policies	4.43**	(2.26)	1.06	(0.07)
Respondent Characteristics				
Female	0.90*	(0.33)	1.16**	(0.06)
Non-White	0.80**	(0.34)	1.06	(0.07)
Constant	0.03***	(0.02)	0.72***	(0.06)
N	553		5599	
R-squared	.2855		.042	

Reference categories: Male→Female, Boss, Outfit Compliment, No Policies, Male, White
Clustered robust standard errors in parentheses
*p <0.05, **p <0.01, ***p <0.001

As a general matter, the relationships with the experimental conditions did not change when we included identity characteristics of respondent. Female judges had a 10% reduction in the odds of identifying the scenarios as sexual harassment relative to their male counterparts, whereas ordinary people had a 30% increase in the odds of identifying the scenarios as sexual harassment also relative to males. These results tell us females in the ordinary people

population would be more sympathetic to the victims in these scenarios than female judges.

The results showed a respondent's race mattered based on respondent population. We coded race in these models as white versus nonwhite given the small minority judge population and to make a consistent comparison across the two populations. Being a minority judge resulted in a 20% reduction in the odds a scenario would be viewed as sexual harassment than if evaluated by non-white judges. An ordinary person who identified as a minority did not evaluate these scenarios any different than a white respondent.

These models tell us that while respondent identity made a difference, it did so in the opposite direction than what we intended. We suspect these unexpected differences were the result of a considerably small judge population with even smaller female and minority sub-populations. We also suspect there may be other variables that need to be controlled for such as age and political ideology.

C. The Full Model

Table 6, below, presents the results of a logistic regressions that features both the experimental conditions in the scenarios, as well as the gender, race, political ideology, and age of the respondent evaluating the scenarios. We also included a standardized index variable that measures confidence in the legal system. Like the previous models, the experimental conditions did not change dramatically when we controlled for additional respondent demographics; although, they changed in magnitude.

TABLE 6. LOGISTIC REGRESSION WITH EXPERIMENTAL CONDITIONS AND EXPANDED RESPONDENT CHARACTERISTICS

	Judges		Ordinary People	
Gender of Perpetrator/Victim				
Male→Male	0.05***	(0.03)	0.34***	(0.03)
Female→Male	0.04***	(0.03)	0.23***	(0.02)
Status of Perpetrator				
Coworker	5.40***	(2.72)	0.80***	(0.05)
Subordinate	1.06	(0.41)	0.87	(0.06)
Conduct				
Shoulder Rub	10.5***	(3.87)	2.25***	(0.22)
Sex Joke Emails	53.1***	(5.79)	4.28***	(0.44)

Policies				
Strict Policies	3.50**	(1.76)	1.29***	(0.09)
Ambiguous Policies	9.01***	(2.26)	1.06	(0.07)
Respondent Characteristics				
Female	1.40	(0.52)	1.13*	(0.06)
Non-White	1.51	(0.66)	0.97	(0.07)
Political Ideology				
Conservative	1.32	(0.27)	0.92	(0.16)
Liberal	0.56	(0.19)	1.08	(0.15)
Age				
40s	0.00	(0.00)	0.73***	(0.06)
50s	0.10*	(0.11)	0.77**	(0.06)
60s	0.38	(0.36)	0.60**	(0.05)
70s	1.03	(1.06)	0.55***	(0.06)
Legal Confidence Index	1.50**	(0.32)	1.13***	(0.03)
Constant	0.37**	(0.21)	1.03	(0.11)
N	527		5436	
R-squared	.3402		.0534	

Reference categories: Male→Female, Boss, Outfit Compliment, No Policies, Male, White, Moderate, Less than 40 years old.
Clustered robust standard errors in parentheses
*p <0.05, **p <0.01, ***p <0.001

When we added the new variables into the model, respondent gender or race had minimal to no effect in comparison to the previous logistic regression models. A judge's race or gender did not influence whether a person would perceive a scenario to be harassment. There was a gender effect in the model featuring ordinary people, which in this case shows there is a 13% greater likelihood a scenarios would be viewed as sexual harassment if the respondent is a female. Ordinary people who identified as minorities did not evaluate the scenarios differently than white respondents.

Political ideology did influence judges or ordinary people, and their faith in the legal system did predict whether a respondent perceives these scenarios as sexual harassment. Judges and ordinary people who had high confidence in the legal system had an increased likelihood that they would view the scenarios as harassment.

Respondent age had no effect on the judge population but it did for ordinary people. In general, the older a person was, the less likely the respondent would evaluate these scenarios as sexual harassment. These results were not surprising because we expected to see oldest respondents as the least likely to view the scenarios as discrimination because they grew up and worked in environments before the enactment of sexual harassment laws. There were no age affects with judges, which we suspect is the result of a fairly homogenous population.

D. Summary of Results

This empirical project presents several interesting findings. Broadly, judges are less likely to classify the very same scenarios as sexual harassment than ordinary people. While this was not a formal hypothesis, these results make sense; judges are trained legal professionals who know the essential elements and the required evidence to prove these claims. However, we did not anticipate to see a nearly 20% difference between ordinary people and judges.

Both ordinary people and judges deferred to a sociocultural model of sexual harassment where harassment constitutes the male perpetrator and female victim. In the bivariate analyses, it appears ordinary people were more willing to view males as victims, whereas judges were not. This was proven to be the case when we took into account other experimental conditions and respondent characteristics in logistic regression models. This finding supports our second hypothesis that gender hierarchy influences both populations.

The perpetrator's status in the workplace yielded interesting results that can be understood by the competing forms of sexual harassment. As mentioned earlier, there are two forms of sexual harassment: *quid pro quo* and *hostile work environment*. Participants did not receive any information about the law. Given judges are familiar with the law, the fact they were more inclined to view scenarios involving coworkers as sexual harassment may hint that they were thinking about hostile work environment as the underlying potential legal claim. There was a slight difference with ordinary people in that they viewed scenarios as less likely to be sexual harassment once we controlled for the other experimental conditions and respondent characteristics. Common to both ordinary people and judges, a subordinate acting as a perpetrator was viewed no differently than perpetrators who occupy a superior role in the workplace. Once again, this result, while puzzling, may be explained by the ambiguity on what legal theory of sexual harassment was operating in this case.

The conduct featured in the scenarios had the most influence in these models for both populations with judges being more influenced than ordinary people. Judges viewed conduct that involved a shoulder rub or repeated sex joke emails as harassment, whereas complimenting an outfit was not. In particular, the repeated emails experimental condition had the most impact in all the models featuring judges. Ordinary people tended to remain fairly

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consistent across the conditions but the repeated sex joke email condition also proved to be the most impactful for them. This finding disproved our hypothesis that judges would be less affected by the conduct than ordinary people. However, this finding makes sense because judges are trained lawyers and are trained to seek out evidence to prove a claim.

Ordinary people were more affected by the presence of a strict sexual harassment policy, whereas judges were influenced by the presence of any policy. Our logistic regression models demonstrate that ordinary people treated an ambiguous policy as the same as a company not having a sexual harassment policy, and that a strict policy increased the likelihood someone would view a scenario as sexual harassment. The presence of any policy (strict or ambiguously written) increased the likelihood a judge would consider a scenario as harassment.

Finally, a person's background had minimal impact on the determination of sexual harassment. Our logistic regression models demonstrate that females in the ordinary people sample were more likely to view the scenarios as harassment than males. This finding is consistent with social psychology theories of empathy where a member of the same group will identify with the person's experience as discrimination. There was no relationship between a judge's identity and the determination of sexual harassment. Both judges and ordinary people identified scenarios as harassment if they had high legal confidence.

CONCLUSION

The results of our study reveal that there are three definitional approaches to sexual harassment. The first is the legal approach where the statutory language and precedent are the predominant framework when evaluating possible legal claims. The second approach is the classification of sexual harassment from social scientific perspective, whereby individuals apply a broader definition that may or may not include extra-legal variables. The third approach is the lived experience, or the empathetic approach, where a person's background influences perceptions of harassment.

While legal scholars and social scientists have long explored sexual harassment, few examined perceptions of sexual harassment and whether ordinary people and trial judges define it differently. We sought to fill this gap by isolating work and employee-specific facts in order to understand what influences a respondent to define a dispute as inappropriate versus illegal harassment. We also took into account an individual's race and gender, recognizing that individuals who are members of a marginalized group are more likely to empathize with victims of discrimination.